

**COMMISSION MEETING
THURSDAY, MARCH 14, 2002
DRAFT MINUTES**

MEMBERS PRESENT: **COMMISSIONER GEORGE ORR, CHAIR;**
COMMISSIONER CURTIS LUDWIG, VICE CHAIR;
COMMISSIONER LIZ McLAUGHLIN;

OTHERS PRESENT:

RICK DAY, Executive Director;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
ROBERT BERG, Deputy Director, Operations;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant

Rick Day, Director, congratulated Commissioner McLaughlin who was recently reappointed as Commissioner by the Governor, and her appointment was confirmed by the Senate on March 13, 2002. Director Day announced that Representative Cheryl Pflug has been appointed to fill Representative Clements' seat as an Ex Officio Member. Representative Pflug serves on the House Appropriations Committee.

HB 2460 & SB 6387 - Operating Budget - **Director** Day said that at this time, the agency has been advised that a \$2,450,000 cut and/or transfer will occur. The initial transfer targeted was \$4 million, which was reduced to \$2 million, and that has now increased to \$2.45 million. He estimated the impact of the transfer would require the agency to reduce expenses about \$75,000 per month, or \$900,000 per year. **Commissioner McLaughlin** asked if the agency was exempted from I-601 and would be allowed to raise license fees. Director Day responded that provision was in the Senate's version of the bill, but not in the House version. The Senate version stated the "State Gambling Commission is authorized to increase existing fees in excess of fiscal growth factor established by Initiative Measure 601." The House version describes a \$2.45 million transfer in 2003; the Senate describes \$2 million in 2002 and \$450,000 in 2003. Essentially, the result is the same and staff is waiting to see which version is passed.

Commissioner McLaughlin asked how the Legislature could step in and take the agency's money when the Commission is a non-appropriated agency? **Ms. Patjens**, Manager, Communications and Legal Department, responded that staff has been discussing that issue, and the Assistant Attorney General's Office indicated that if the Legislature goes through with the transfer process and they follow the proper channels, the Legislature, in essence, could effect the transfer. **Director Day** affirmed they wrote the law so they could change it, and that is what they are in the process of doing. There is a change to RCW 9.46.100 that says the Legislature can transfer the amounts they wish.

SHB 2767 - Electronic Benefit Cards appears to be going through at this time. It would prohibit those who have the cards for public assistance and food stamps to be able to use them for gambling purposes.

HB 2918 - Authorizing Bingo operations seven-days a week for nonprofits. The bill had a moratorium section, and because of the way it was worded, it would have excluded smaller new licensees and punchboards and pull-tabs. The ultimate result was that the Senate removed the moratorium altogether.

Director Day reported that SB 5064, the cheating bill passed both houses. It was amended slightly; it allows up to a \$20,000 fine to go with the felony cheating penalty, and it changed from a Class B to Class C felony.

HB 2631 & SB 6491 - Background checks. The legislation the Commission proposed was successful in both houses.

EHB 2918 - Zoning bill; this was the bill discussed at length last month. It did not get a hearing in the Senate, and therefore, appears to be dead this session.

Director Day emphasized that this was an extremely condensed legislative summary and referred the Commissioners to the additional materials in the agenda packet for more detailed reports.

B) Governor's Directive to Agencies to Freeze Hiring, Travel and Equipment Purchases:

Director Day reported the agency had already frozen approximately 20 positions prior to the legislative session. In order to comply with the spirit of the Governor's directive, the agency implemented a freeze process and would be able to document the decisions as we move through the process. **Director Day** noted that we are independent and not directly included in the directive; however, he felt that it was very important that we recognize that process. In addition, the agency has to deal with the \$2.45 million reduction. The agency also continues to freeze 17 house-banked card room positions; three are management-type positions. **Director Day** noted the Governor's freeze order contains a public safety exception, which allows the agency to continue to fill agent positions as necessary after careful deliberation and justification. The agency will be freezing all non-agent or support-type positions and implement a freeze in all nonessential travel, conferences, and training. **Director Day** explained that travel restrictions apply primarily to out-of-state or out-of-country travel. **Director Day** affirmed this is a fairly restrictive process and that staff is making sure that we make sound, clear decisions as we move forward, given both our financial situation and the Governor's order.

C) Adjusted Cash Flow Report – **Director Day** addressed the latest version of the report which is updated quarterly and would be supplied to the Commissioners each quarter. He noted the report is based on information sent in by licensees on a quarterly basis. The adjusted cash flow report contains the top 40 and the smaller operations. Currently, it appears there are seven of the top 40 licenses that could be facing revocation actions following the first quarter of 2002 due to average cash flow below the requirement. **Commissioner McLaughlin** asked how many licensed nonprofit Bingo organizations existed? **Derry Fries**, Assistant Director, responded that there are 294; 82 are Class A's, 54 are Class B's, 58 are Class C's and 35 are Class D's. **Chair Orr** asked what the financial cusp was. Mr. Fries explained the Class A is up to \$50,000.

D) House-Banked Public Card Room Report – **Director Day** reported the house-banked public card room report would be included in the agenda packet whenever we have a Phase I or Phase II review scheduled at the commission meeting. That will clarify how many exist and how many have closed, with each licensing action taken.

E) Updates and News Articles:

- 1) **Administrative Case Update.** **Director Day** reported a summary suspension had been issued to the YWCA. They requested a stay and were successful with the stay hearing and have since reopened. They filed an amended report, which was verified with the agents and if we concur, we will dismiss the suspension. The Boys and Girls Club of Snohomish Order of Default will not be brought before the Commission at this time. Staff is clarifying what their intention is. **Commissioner McLaughlin** said she would like to be advised of the outcome.
- 2) **Director Day** addressed several news articles relating to tribal issues. An article, from the *Tacoma News Tribune* addressed the discussion conducted at the January meeting regarding firearms, law enforcement, and criminal activity. **Director Day** also drew attention to an article documenting the YWCA suspension issues. Several articles were included that addressed machine and video games being introduced out-of-state, because of their potential for revenue generation. **Director Day** reported that Ohio would be joining the Big Game with Oregon, and several other states. **Commissioner McLaughlin** asked if the Governor had approved the Big Game. **Ms. Patjens** believed that it did not pass the House by a very slim margin; however, the House ruled that it did not need a super majority—it only needed the 50 percent. At last check, it was still shy about three votes.

2. **New Licenses, Changes, And Tribal Certifications:**

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to approve the new licenses, changes and tribal certifications listed on pages 1 through 19 of the agenda packet under License Approvals. *Vote taken; the motion carried with three aye votes.*

3. **Group IV Qualification Review:**

Yakima Greenway Foundation:

Bob Berg, Deputy Director, reported on fiscal and calendar year 2000. This organization was formed in 1980. Its mission is to conserve, enhance and maintain the Yakima Greenway as a continuing living resource for future generations. Licensed by the Commission since 1992, the organization has 1,178 active members with 25 board members, including four officers who conducted 12 meetings during the last fiscal year, meeting the requirements of the Commission's Washington Administrative Code [WAC]. The organization owns and maintains a system of paths, parks, and natural areas along the Yakima-Naches River providing year-around access to the public for recreation, nature, and enjoyment. The facilities include 10 miles of paved pathway, three parks, two stocked fishing lakes and numerous natural areas.

For the fiscal year ended December 31, 2000, the organization's gambling operations suffered a net loss and, therefore, no proceeds were provided to programs. However, they did meet the supporting services requirement and did not have excessive reserves. Based on the year of the compliance review in 2000, and based on the rules in place then and subsequently changed in 2001, staff recommends that they be approved and qualified as a charitable organization authorized to conduct gambling activities in the state of Washington.

Neil McClure, introduced himself as the immediate past president of the Yakima Greenway Foundation.

Commissioner Ludwig asked if this organization was the one that another Bingo operator was directly competing against. **Ann Espinoza**, Manager of Yakima Greenway, responded that he was correct. **Commissioner Ludwig** said he was disappointed to see that in 2000 the organization had a substantial loss. He agreed with staff's recommendation and felt that based on the rules, they should be given an opportunity. He asked if the recent proposed legislation to expand operating to seven-days and/or sharing a facility would help? **Ms. Espinoza** said the sharing of another facility could be a possibility, but she was unsure if more days of operation would be beneficial.

Mr. Berg said that but because of the quirky nature of this particular review, he talked to the director about the unique set of circumstances relating to the Commission passing a rule in April, which changed the whole cash flow formula process. He affirmed the organization filed a plan with the agency, which the rule requires when an organization is notified that they are below the adjusted cash flow bar. They have taken steps to reduce their rent on their facility, and are doing the things that the Commission and staff would expect, given the rules, that a licensee would do.

Commissioner McLaughlin asked if they were going to make it. **Mr. McClure** responded that they have undertaken aggressive cost cutting measures and are tightening their operations to make it more profitable. The just-completed year

of 2001 is a complete turnaround from 2000, and they have positive flow to their organization. They are hoping to make the minimum returns for the four quarters at the end of March.

Commissioner Ludwig made a motion seconded by Commissioner McLaughlin to approve Yakima Greenway Foundation located in Yakima as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. Vote taken; the motion passed with three aye votes.

4. House-Banked Card Room Review:

Yakima Card Room LLC / Casino Caribbean, Yakima:

Derry Fries, Assistant Director, reported that this organization was formed as a limited liability corporation on September 30, 1998, and has applied for a license to operate up to 15 tables in house-banked card games. The applicant was originally formed as the Lacey Casino, LLC, and in November of 1999, an amendment was filed with the Secretary of State's office to change the name to Yakima Card Room LLC. Their headquarters are located in Yakima at the present time. Their membership consists of Herbert Lampert who owns 90 percent of the membership shares. Michael Marquess owns 10 percent of the shares and he has no other interests in house-banked card rooms at this time. Special Agents from the Financial Investigations Unit conducted a criminal and personal history background investigation of all substantial interest holders and initiated and completed a financial investigation of both the company and personal membership finances. There were no disqualifying factors found during the investigation. Special agents also completed an on-site preoperational review and evaluation report in accordance with the rules of the Commission. The applicant was found to be in compliance with the rules of the Commission. Based on the review, staff recommends Yakima Card Room LLC be licensed to operate a house-banked public card room and be authorized for up to 15 tables with a maximum \$25 betting limit.

Commissioner McLaughlin asked how many card rooms exist in Yakima? **Mr. Fries** responded that if Casino Caribbean is approved, there would be four. **Commissioner Ludwig** asked why they changed their name or why was it formerly Lacey LLC? **Mr. Marquess** replied that originally, their site was going to be located in Lacey, and then they changed their plans and located in Yakima at a later date. Commissioner Ludwig asked if they were ready to open. Mr. Marquess advised their scheduled opening is March 29.

Commissioner Ludwig made a motion seconded by Commissioner McLaughlin to approve Casino Caribbean to operate a house-banked enhanced card room with a maximum \$25 Phase I betting limit. Vote taken; the motion passed with three aye votes.

5. Phase II Review:

Christos, Bellingham

Bill McGregor, Special Agent, reported that Christos is a commercial restaurant/lounge and house-banked facility located in Bellingham. Christos is owned by Jaspar Holding Incorporated which is 100 percent owned by Jaskarn Gill, who also owns the Slo Pitch Pub and Casino in Bellingham. Christos began conducting house-banked activities on September 7, 2001. They are licensed for seven tables and currently operate six tables consisting of two non-house-banked tables, two Lucky Ladies, one Fortune Pai Gow, and one Spanish 21 tables. Staff conducted a comprehensive investigation including a review and observation of the operating procedures for the four key operating departments. The review team compared the licensee's actual operating procedures to those documented in the WAC card room rules. The licensee's written internal controls were also compared to the card room rules to ensure compliance and consistency. A review was also conducted of the organization's gambling and organizational records to ensure record-keeping compliance. During the review, no hidden ownership or unreported third party financing was detected. The violations noted during the review were verified as corrected during a follow-up inspection. The city of Bellingham was contacted to verify the licensee is current on all gambling taxes. The Bellingham Police Department was contacted to verify there had been no adverse impacts on the community as a result of the card room. Based on the review, staff recommends approval to operate at Phase II wagering limits.

Commissioner Ludwig asked if there was a recent closure of a card room in Bellingham? **Wendy Anderson**, Casino Manager, affirmed that Jack Nieman's Steakhouse closed down about a year ago. She also noted the Quarterback Casino, was only open only for a short period of time, and was located just down the street from Christos. There are only two casinos open now including Christos, and they do quite well.

Commissioner Ludwig made a motion seconded by Commissioner McLaughlin to approve Christos located in Bellingham for Phase II \$100 wagering limits. *Vote taken; the motion passed with three aye votes.*

Crazy Moose Casino, Pasco:

Bill McGregor, Special Agent, reported that the Crazy Moose Casino is a commercial restaurant and card room located in Pasco. The Crazy Moose Casino is owned by Robert Mitchell, Carl Jacobson and Stephen Bowman, each of whom own 33-1/3 percent of the business. Crazy Moose Casino began conducting house-banked activities on September 22, 2001. The card room is licensed and operates 15 tables consisting of five Lucky Ladies, two Three-Card Poker, four Spanish 21, two Casino War, one Match the Dealer and one Let It Ride games.

Staff conducted a comprehensive investigation, including a review and observation of the operating procedures for the four key operating departments. The review team compared the licensee's actual operating procedures to those documented by WAC and the card room rules. The licensee's written internal controls were also compared to the card room rules to ensure compliance and consistency. A review was conducted of the organization's gambling and organizational records to ensure record-keeping compliance. During the review, no hidden ownership or unreported third party financing were detected. Violations noted during the review were verified as corrected during a follow-up inspection. The city of Pasco was contacted to verify that the licensee is current on their gambling taxes. The Pasco Police Department was contacted to verify there have been no adverse impacts as a result of the card rooms. Based on the review, staff recommends that Crazy Moose Casino be approved to operate at Phase II wagering limits starting March 22, 2002. **Agent McGregor** introduced the casino staff present: Pat Jutz, General Manager, Lorie Payne, Chief Executive Officer, and Harold Wolford, Casino Manager.

Commissioner Ludwig made a motion seconded by Commissioner McLaughlin to approve Crazy Moose Casino located in Pasco for Phase II wagering limits starting on March 22nd. *Vote taken; the motion passed with three aye votes.*

Cleopatra's Wild Grizzly Casino, Kelso:

Bill McGregor, Special Agent, reported that Cleopatra's Wild Grizzly is a commercial restaurant/lounge and card room located in Kelso. The organization is owned by Cleopatra Gaming Management LLC and Phoenix Washington LLC, each holding a 50 percent share. The owners also hold an interest in Cleopatra's Cable Bridge Casino located in Kennewick, and Cleopatra's Wild Goose Casino LLC located in Ellensburg.

Wild Grizzlies began conducting house-banked activities on August 14, 2001. The card room operates 12 house-banked tables, which includes four Blackjack, two Lucky Ladies, two Progressive Blackjack, one Three-Card Poker, one Let It Ride, one Caribbean Stud, and one Spanish 21 tables.

Staff conducted a comprehensive investigation including a review and observation of the operating procedures for the four key operating departments. The review team compared the licensee's actual operating procedures to those documented in WAC card room rules. The licensee's written internal controls were also compared to the card room rules to ensure consistency in compliance. A review was conducted of the organization's gambling and organizational records to ensure record-keeping compliance. During the review, no hidden ownership or unreported third party financing were noted. The violations noted during the review were verified as corrected during the follow-up inspection. The city of Kelso was contacted to verify the licensee was current on all gambling taxes and the Kelso Police Department was contacted to verify that there have been no adverse impacts on the community as a result of the casino. Based on the review, staff recommends approval to operate at Phase II wagering limits.

Eric Nelson, Owner, was available for questions. **Commissioner Ludwig** congratulated Cleopatra's LLC for their Phase II Review, noting two violations which had been corrected. **Chair Orr** asked how much competition they had and inquired about the population of Kelso? Mr. Nelson replied their only competition was the Cadillac Ranch. He reported the population of Kelso was about 40,000 which includes Longview.

Commissioner Ludwig made a motion seconded by Commissioner McLaughlin to approve Cleopatra's Wild Grizzly Casino located in Kelso for Phase II wagering limits of \$100. *Vote taken; the motion passed with three aye votes.*

6. Other Business/General Discussion/Comments From The Public:

Chair Orr called for comments. **Gary Murray**, Vice President, Recreational Gaming Association, thanked the Commission for coming to Pasco. He congratulated Commissioner McLaughlin on her confirmation as a Commissioner, and reported that his organization looked forward to working with her for five more years.

Chair Orr called for other comments. There were none.

7. Executive Session To Discuss Pending Investigations, Tribal Negotiations & Litigation:

Chair Orr called for an Executive Session at 2:30 p.m. He reconvened the public meeting at 3:30 p.m. and adjourned the meeting until 9:30 a.m., March 15, 2002.

**COMMISSION MEETING
FRIDAY, MARCH 15, 2002
DRAFT MINUTES**

MEMBERS PRESENT: **COMMISSIONER GEORGE ORR, CHAIR;
COMMISSIONER CURTIS LUDWIG, VICE CHAIR;
COMMISSIONER LIZ McLAUGHLIN;**

OTHERS PRESENT: **RICK DAY, Executive Director;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
ROBERT BERG, Deputy Director, Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

Chair Orr called the meeting to order at 9:30 a.m., at the Double Tree Hotel located in Pasco and welcomed the attendees.

8. MINUTES – February 14 and 15, 2002:

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to approve the minutes of February 14 & 15, 2002 meeting as presented. *Vote taken; the motion passed with three votes.*

9. STAFF REPORT - UPDATE ON LOCAL ORDINANCES THAT RESTRICT OR ZONE GAMBLING:

Amy Patjens, Manager, Communications & Legal Department, explained that she would update the Commissioners on the local ordinances that cities and counties have passed restricting or zoning gambling. The purpose of this report is to update the Commissioners on any new prohibitions and bans implemented within the past two years. She reminded them of staff's procedure when an application is received from a business in a jurisdiction with a partial ban rather than a complete ban, or in a jurisdiction that has tried to control the location of gambling through zoning. Ms. Patjens also planned to update the Commissioners on two lawsuits that deal with a city's ability to restrict gambling.

Commissioner McLaughlin asked for an explanation of the partial ban. **Ms. Patjens** replied that a partial ban typically means for example, that a jurisdiction may have grandfathered three locations, and currently bans any additional card rooms. Commissioner McLaughlin asked if that was legal. Ms. Patjens replied that it probably does not comport with RCW 9.46.295, because that refers to an absolute prohibition. She believed it is difficult to argue that one has absolutely prohibited gambling if they have allowed a few in, but not all in. There is a lot of debate about this issue, which is why there are a couple of lawsuits and why zoning legislation has been proposed over the last couple of years. Prior to house banking, staff didn't get many questions from local jurisdictions about whether they could ban gambling activities or not. However, when the law was changed in 1997, there was an increase in questions to staff. There were also many more cities and counties that decided to ban gambling. They usually banned the house-banked card rooms, but there were a few jurisdictions that proceeded to ban other activities, like pull-tabs and amusement games. There was a flurry of ordinances that were passed between 1997 and 2000. That has slowed down over the last couple of years and Ms. Patjens was not sure if that was because more jurisdictions have experience with card rooms; or, if it's just that most

jurisdictions have already addressed this issue, so the agency is not seeing the same number of ordinances. During the 1997-2000 period, the agency had several requests to go to city council meetings and local citizen groups to explain more about house-banked card rooms. There were a lot of questions about licensing regulations, and what the Gambling Commission does.

Ms. Patjens reviewed a list of local jurisdictions that have prohibited gambling activities or have imposed moratoriums. Staff does not believe the bans comply with RCW 9.46.295 because they are not absolute prohibitions. RCW 9.46.295 says that local jurisdictions may absolutely prohibit gambling, but may not change the scope of a license. The question really turns on what 'absolutely prohibits' mean. She pointed out that those jurisdictions that were marked with yellow (in the agenda packets) have allowed a few card rooms, but then banned the rest. They are really giving a monopoly to any that were licensed prior to the date of the ordinance. She highlighted those cities: Auburn, Edgewood, Edmonds, Fife, Kent, Lacey, Port Orchard, Tacoma, Tukwila, and then Pierce County. She noted that there are a couple of jurisdictions listed; for example, Edgewood and Port Orchard, which do not have house-banked card rooms, but, it's just the way their ordinances were worded—they're not complete bans.

Ms. Patjens reported the jurisdictions that were highlighted in blue (Burien, Lakewood, Renton and Shoreline) have tried to control gambling by zoning, which they also believe is not an absolute prohibition because they're allowing card rooms in some locations, but not others. She noted that cities could zone things like parkage and signage. Staff also believes they can zone all food and drink businesses into a certain area, because one must be a food and drink business for on-premises consumption to have gambling. She wanted to make very clear that staff is not saying that they don't think cities can do that, or deal with signage issues.

Ms. Patjens reported that the zoning bill discussed last month is dead; it did not get a hearing in the Senate, which is the same thing that happened last year. **Chair Orr** asked if there was vocal and notable opposition, or whether it died for a lack of a lobby. **Ms. Patjens** said her impression was that it probably died for the same reason that it died last year—there's a real division between the House and the Senate on this particular issue. On the House side, there are a couple of representatives who live in areas like Pierce County where they have constituents, and the county, who have said that if they were able to have zoning, it would help them with some of the other problems they have. On the Senate side, there is more memory of what was going on when the Gambling Act was created--the issues with local governments and some corruption issues.

Commissioner Ludwig asked about the Commission's position, and whether it had any effect. **Ms. Patjens** said she was quite sure that Senator Prentice and Representative Wood clearly understood the agency's position.

Ms. Patjens addressed moratoriums, noting that East Wenatchee recently passed a moratorium to study gambling. Meanwhile they're allowing one house-banked card room to continue to operate and then allowing about three others to continue that had applied by a certain date. Most of the moratoriums from two years ago later converted into some type of ban. Usually, the purpose of a moratorium is to allow a city to look at an issue before making land use decisions. Here, they have allowed some card rooms and now they're going back and taking another look at it.

Ms. Patjens referred to a sample letter that is sent to an applicant in a jurisdiction that has a partial ban, or where the city has passed a zoning ordinance governing the location of a card room. She recalled that the Commissioners discussed how they were going to handle these applications about three years ago, and decided to go for a balance between letting applicants and cities know that we didn't believe a ban was a complete ban as contemplated by the Gambling Act, but not unnecessarily spending someone's time or hours by processing an application if, once they knew this, they decided they'd really rather locate to a different jurisdiction where there weren't any questions. She referred to yesterday's testimony by the Lacey LLC, who found themselves in a situation where the city was looking at some prohibitions and they subsequently decided it would be easier to locate somewhere else. **Ms. Patjens** noted that Dolores Chiechi with the RGA had also testified several times that card rooms, as business people, prefer to go into a jurisdiction where they feel they are welcome. She said that when staff sends a letter (similar to the sample) to the applicant, they send a carbon copy to the city attorney so they are informed of the Commission's position. She noted that it has been interesting that one of the things heard in different testimony given at the Legislature is that all city attorneys completely disagreed with the memo by Jon McCoy who was then their Assistant Attorney General. **Ms. Patjens** noted that from her experience in talking with cities, it's usually about half and half—some jurisdictions are not sure, others hold firm to the position that they can control gambling, particularly through zoning.

Ms. Patjens noted the agency had anticipated that there would be a lawsuit that would clarify what the absolute prohibition language meant; whether it is okay to allow one card room, but not all of them -- and, whether cities could zone a location of card rooms beyond just the food and drink business. The first lawsuit was filed about year and a half ago. The Snohomish County Superior Court ruled last month that an ordinance that the city had does prohibit gambling. The thing that was complicated about it is that the city actually had three different ordinances. Initially, they had passed an ordinance which banned all card rooms. Then the people filed an initiative. It said that any card rooms that were currently licensed could continue, but they could not expand or intensify their use. At the time, Marty's existed as a business in Edmonds. They were licensed as an E-5 card room, which is the license that allows them to have five Poker tables, but they clearly had intentions of later on becoming a house-banked card room. The city decided that because they thought there was a lot of support for this initiative, they would pass the initiative rather than incur the expenses of putting that to a vote. The city attorney explained that what happens with state and city initiatives is a little bit different—the city can't actually go back and change any initiative language unless they put it back to a vote of the people. Basically, after the second ordinance was passed, which staff did not feel was a complete prohibition, they sent Marty's a letter with a carbon copy to the city attorney indicating they didn't feel this was a complete prohibition. Then the city passed a third ordinance saying that if any part of their other ordinance was struck down (meaning the initiative ordinance), then the first ordinance would apply. Ultimately, the Superior Court ruled that the city does ban house-banked card rooms. Staff was told by the city attorney that they expected Marty's would appeal. Staff is waiting for a copy of the Superior Court's written order, which to date hasn't been drafted.

Ms. Patjens reported the other lawsuit could possibly give more direction. It pertains to a different issue and was filed in August by Paradise Bowl, a house-banked card room located in Pierce County. They have been operating as a house-banked card room since about January of 1999. Pierce County passed an ordinance prohibiting card rooms, but allowed the ones that were operating to continue until August 15, 2002, at which time they have to stop operating. Pierce County has two house-banked card rooms: the Paradise Bowl, the plaintiff, and Six Card Charlies. Paradise Bowl did bring action against the county claiming that the ordinance wasn't in effect when they were first approved for a house-banked card room. One of the arguments they make is that the county is basically taking their property now by imposing the ordinance. This case could answer the question of whether amortization clauses are permissible. Currently, there are only two jurisdictions with these types of clauses. One is in Pierce County and the other is the city of Kent. The card room Kent grandfathered in was Ruby's Casino, and it has been closed now for a couple of years. **Chair Orr** called upon Bob Tull.

Bob Tull, Lawyer from Bellingham, affirmed Ms. Patjens report and stated that all they have at the moment in the Edmonds case is an oral decision by the Judge. Mr. Tull said the Judge was very uncomfortable and expressed his discomfort with having to do what he was doing—he acknowledged that it wasn't particularly fair. Mr. Tull said the order hasn't been drafted, and he believed there would be some substantial debate about some portions of the findings, conclusions and order. The city conceded that most of the ordinance was defective, but they felt that they had to argue that the ban was there. The Judge, after a lot of argument, determined that, even though he didn't like it, that it appeared there was sort of draconian power. Mr. Tull noted that at the last Commission meeting, there was discussion about the zoning matter. Mr. Tull said he has worked on that issue extensively in the last five years and he believed that cities had lots of tools that they could use carefully to determine where businesses of different types may occur in communities.

Mr. Tull's concern is that it has become clearer that today's card rooms—unlike those that existed prior to the Gambling Act, or in the early years of the Gambling Act—are now businesses that frequently involve expenditures of \$500,000 to \$5 million of capital improvements. The amount of money at play and the amount of jobs at play, are now part of an equation where all it would take is for someone who had a brother-in-law on the Council to say to an operator, "Operator, you are already licensed, as a lawful and upstanding person, that I think there's some mumbling going on about banning card rooms and you're investment is going to be toast—you're going to get to live out your remaining license year and then you have to fold the tent. I sure hope that doesn't happen." At that point the licensee says, "Well, what do I do?" And the response is, "Well, you should probably make sure that you hire my law firm." Or, "Don't you think that you need to pave the parking lot?" Or, "What about re-striping?" Mr. Tull imagined the opportunity for tremendous pressure would go up as the amount of money at stake goes up. He thought there might be solutions and he hoped that the Commission would continue to make sure that opportunities for corruption don't become institutionalized.

Mr. Tull said the Legislature purposefully and with great success allowed the card room businesses to become much more substantial. He felt they may have to require the assistance of the Commission to visit the issue of under what circumstances should bans be, or not be retroactive. Or, should a ban that applies to an existing card room—which is completely lawful—have the death penalty effect? Or, should that only take place when it's the card room that brings down its own demise? He noted card rooms have gone out of business because of some past or present misconduct on the part of its licensee or owners. Those go away and tremendous investments have been lost, but it's a different order of importance. Mr. Tull thought that this issue was very delicate and he emphasized that he was not suggesting that local politicians or local elected officials are prone to that type of manipulation. The licensees are trained and observed by the agency to make sure these things don't take place, but he felt there is a real possibility that manipulation would become increasingly a concern because the political power over a licensee is unique. There is no other circumstance where a city can tell an existing licensed lawful business that they have weeks or months to fold their tent. Mr. Tull asked the agency to start thinking on a technical level; should the Legislature be advised to make sure that bans affecting existing card rooms have to be driven by misconduct as opposed to local politics?

Commissioner Ludwig said he was trying to understand what the trade-off is for those bans, even under a grandfather clause with a future deadline -- for those that have that kind of a card room, isn't it worth substantially more right now than it would be if that ban didn't exist at all? **Mr. Tull** affirmed, only where there is a ban with an amortization clause. He explained that amortization clauses are still a little murky in Washington as to whether or not they have to pass muster in the normal zoning land use context. There's some suggestion that they may, but we don't know yet. Mr. Tull believed that as the comprehension of this issues spreads, it will be harder and harder for a business in this state right now to attract investors, and harder to finance. The amortization, if it passes constitutional muster, would at least be an effort by a city to recognize the problem of fairness and to not have such an abrupt impact. Mr. Tull commented that there have been some folks in the industry who have felt that it was okay, at least for the present time, to tacitly support that type of local moratorium followed by a ban with either amortization or grandfathering because they, like anyone, don't mind that special status, particularly if it gives them a better handle on market share than they otherwise would have had. He suggested that it's a dangerous tool. Mr. Tull said the general system of our statute is to not put licenses into a category of having intrinsic value. A person who closes a facility one place, and moves to a new facility—that's fine—they knew what they had to do to justify the investment, but a person who has just completed their installation, or is underway with a remodel (which is the Edmonds situation), to then find out, "you'll only get to the end of the license year and that's it." That's a harsh result that is unprecedented and has other regulatory implications.

Chair Orr agreed it is complicated, especially if someone has a five-year lease and a one-year moratorium, they have another albatross around their neck. **Mr. Tull** addressed another complication, some cities and counties in Washington have initiative and referendum powers; some do not. That's one other potential change in the statute, to have that prohibition power be a legislative authority of the city council. Under case law, that would direct the matter as a city council matter. Arguably, from the other side, people would rather retain those powers.

Commissioner McLaughlin asked why an attorney for an existing card room couldn't go to court and make the city use their eminent domain powers in closing their business. **Mr. Tull** noted that one of the issues is that the court in the Edmonds case for example, is confused about the idea that the Gambling Commission's rule or statute makes it clear that a person doesn't have a vested right to a continuing issuance of a gambling license. A person who qualifies and continues to qualify has a right to a license under the rules that exist each year. If one is no longer qualified—because a crime or some other offense—then one would lose their license. The analysis of the court is that it means one doesn't have a vested right in a gambling establishment. Mr. Tull believed that Washington law was very protective of vested rights for businesses and individuals who go through all the necessary permits. The interface between the gambling statute, which is an annual license that doesn't vest, or one's right to license if they qualify, bumping up against the absolute ban—that part of the statute language is troublesome. The court's view is that it doesn't seem fair. However, it very well may be that a person only has the right to that year's operation and that the city doesn't say they have to go out of the restaurant or bar business. It just says they won't be able to operate a card room or house-banked card room. That's part of the theory. That leads into the whole question of the takings clause—the Fifth Amendment that prohibits the government from taking or destroying property. Cases don't give a clear line as to how much negative impact is tolerated before it becomes an inverse condemnation or destruction.

Mr. Tull said that one of the troublesome things is that the court didn't even get to those issues because it felt that the gambling statute gives cities the power whether they operate with discretion or not, whether they have any reason or not,

to just say no. If the city can do that, and doesn't have to worry about any other vested rights or other lawful entitlements, then the statute will mean what the city of Edmonds means. Mr. Tull thought in due course, it may be appropriate for the Commission to assist the Legislature or the courts in crafting a solution that takes into account the card rooms of this century—not the card rooms of the past century. There were no further comments.

Director Day provided a quick legislative update. The "Big Game" was approved; the \$2.45 million transfer from the agency's budget stands; and the agency's I-601 exemption authority was defeated. The Legislature adjourned 15 seconds before midnight. Director Day clarified that according to Deputy Director Fleisher's understanding of the I-601 issue, it was an exemption for the Legislature to collect more fees for the Department of Licensing, but it did not pertain to our authority. There were no other comments.

RULE UP FOR FINAL ACTION

10. Petition For Rule Change - Teaching The Public How To Play Craps:

WAC 230-02-205

Amy Patjens reported this is the fourth month this petition has come before the Commission. The petition was submitted by William Kirtland who owns a business in Tacoma called The Player's Edge. He wants to teach the public how to play the game of Craps. No gambling would actually occur; there would be no cost to enter, or prizes paid. Staff has been working with Mr. Kirtland for several months. When he was told that he could not possess professional gambling equipment for this purpose, he then requested that a new section be added to the gambling service supplier definition to allow him to provide these educational and instructional classes or seminars. Staff looked at this and a memorandum was issued outlining the policy and regulatory concerns on whether to allow this; it is a policy call.

Ms. Patjens highlighted a few of the issues in the memorandum. One policy consideration was whether to allow a non-business entity that's not licensed, not tied to a specific location, to possess gambling equipment. Currently, licensees that can possess gambling equipment—for example, Blackjack tables, Roulette and Craps—are tied to a specific location. There could also be the perception that the Commission would be encouraging gambling rather than regulating it by passing this petition. The flip side is that some might argue that the Commission is encouraging patrons who gamble to at least understand the game. Mr. Kirtland has said that Craps is a very difficult game to understand. Another issue that staff discussed was that by allowing this, it would also allow house-banked card rooms or any other licensee to bring in the same equipment and they too could offer these classes, or have it available as a free play. With house-banked card rooms, in particular, this could give the perception that mini casinos have more than just card games. Again, this could be any licensee, but the scenario staff was thinking about more was house-banked card rooms. At the November Commission meeting, then-Commissioner Forrest had asked whether some of staff's regulatory concerns could be addressed by adding language to the proposal. Staff worked on the language, and if the Commission decided to pass this rule, staff would recommend that staff's suggested language be used instead of the original petition.

Two letters have been received opposing this petition. Kent Caputo, the attorney for the Jamestown S'Klallam Tribe and another tribe, also testified against the petition. Copies of these letters were sent to Mr. Kirtland who addressed them at the last Commission meeting. He was made aware of the date and time of this meeting and said he was not sure he could attend. **Ms. Patjens** reminded the Commissioners this was a policy call—she felt it was important to state that nothing prevents Mr. Kirtland or anyone else from using any type of homemade equipment and teaching the public how to play Craps, Blackjack, or any other type of game. **Chair Orr** called for public comments.

Bruce Tower, Attorney, who represents some of the tribes in the state of Washington, commented that outside of the regulatory concerns that Director Day outlined, he believed the overriding concern of the Commission should be the policy considerations. Very specifically, he believed the perception would be that the Commission is promoting the expansion of gambling and that's not really within the purview of the Commission.

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to deny the petition submitted by William Kirtland, owner of The Player's Edge. *Vote taken; the motion passed with three aye votes.* **Commissioner McLaughlin** explained that in her opinion, if the petition were approved, it would look like the Commission was promoting a form of gambling. **Commissioner Ludwig** noted the Commission's denial does not prohibit Mr. Kirtland from teaching the strategy and procedures for doing Craps-type gambling on homemade equipment.

RULES UP FOR DISCUSSION

11. Distributor & Manufacturer Credit Restrictions:

WAC 230-12-340; WAC 230-12-330; WAC 230-30-106

Amy Patjens stated these rules were filed after the last meeting. There is a general prohibition on extending credit. The original rules were discussed in 1997, when several distributors had manufactures and other distributors who owed considerable amounts of money for Pull-tabs. At the time, one of the things the Commission required was that if a distributor became delinquent on a trade account, and did not pay within the time agreed, this was considered extending credit. The distributor was required to notify Commission staff. Agency staff then notified all the manufacturers and distributors that the identified business was delinquent and future purchases had to be cash only. Typically, almost as soon as this happened the distributor would pay the debt, notify staff, and then staff would again have to go back and notify all of the distributors and manufacturers that it was now okay to buy again, under trade account terms. This was labor-intensive. Agency staff suggested dispensing the requirement that Commission staff be responsible for notifying the distributors. A compromise has been achieved with the distributors and manufacturers; they will notify each other and Commission staff of these delinquencies, in lieu of staff doing all of the notification.

Item 11(B) requires distributors to sell gambling products to all licensees for the same prices and under the same terms. The distributors are required to notify staff of current price lists and of sales—they've had to do that for several years. This rule would now allow discounts on multiple sales transactions instead of limiting them to a single sales transaction. They would still be limited to sales that were made over a seven-day period. The licensees have requested this change and staff did not have any regulatory concerns. Sales can still be tracked by looking at purchase invoices. **Chair Orr** asked if multiple sales transactions happen often. **Ms. Patjens** answered that it doesn't happen with discounts because discounts are not allowed. Chair Orr asked if there were requests and Ms. Patjens said her impression is that the licensees will use it. **Ms. Cass-Healy** affirmed.

Ms. Patjens said that Item 11(C) deals with merchandise prizes. Pull-tab operators can award either cash or merchandise as a prize for a winning Pull-tab and the merchandise prizes are assigned winning numbers consecutively, the prize that's worth the most is assigned the lowest available winning number. Language was added to make it clear that prizes themselves needed to be numbered in the order of their value. This makes it easier for staff when they are auditing and it ensures that licensees account for the game in the same manner. Staff recommends further discussion. There were no questions from either the Commission or the public.

12. Qualification Reviews:

WAC 230-08-255; WAC 230-04-064:

Amy Patjens reported the qualification reviews have been discussed for several months. These are the larger organizations that come before the Commission and are required to show that they have made significant progress towards their stated purposes. Group IV and Group V licensees will come before the Commission once every three years instead of annually. The reviews will be more extensive and will focus on the actual programs the organization is providing. There will still be the financial focus which they have now, but it won't be the only focus. Organizations with pending administrative charges will only come before the Commission once those charges have been resolved. Item 12(A) puts these new rules in place, and Item 12(B) takes some language that was previously in this rule and relocates it to Item 12(A). Other changes were made to make the rules easier to read, but do not impose new requirements for the licensees. Staff recommends further discussion.

Commissioner McLaughlin asked if the nonprofits qualify for a 501(3)(c) and have an IRS exemption, why the Commission even looks at them. **Ms. Patjens** answered that the original legislation in the Gambling Act talks about nonprofit organizations having to show that they have made significant progress towards meeting their purposes once a year. Part of the program review confirms that the programs actually exist, and the IRS does not do that type of detailed review. **Bob Berg**, Deputy Director, further explained that the qualification review, in essence, tracks the money out of the gambling operation to the parent organization and verifies that the money goes to programs for which the organization exists. **Commissioner Ludwig** verified that if the Commission adopts this rule, the organizations would only be reviewed every three years in the absence of administrative action. Ms. Patjens explained that they would still be required to submit financial statements to the Commission once a year, and staff would still be reviewing them on an annual basis. They would also still be monitored every quarter for their cash flow situation; the difference is they won't actually come before the Commission except for once every three years. There were no more comments.

RULES UP FOR DISCUSSION AND POSSIBLE FILING

13. Promotions for Gambling Activities:

WAC 230-12-045; 230-12-050; 230-02-145; 230-20-111; 230-30-125; 230-20-230; 230-40-800; and 230-40-897:

Bob Berg reported that these rules deal with promotions for gambling activities, prohibition of gifts with limited exceptions, and prohibition against extension of credit. There are eight proposals in this package, including one new rule, two amendments to existing rules, and five rules which will be repealed. The package is both a policy statement, as well as a consolidation of existing exceptions clarifying those exceptions in these new rules.

He noted there has been a general prohibition against licensees giving credit loans or gifts to persons participating in gambling activities for several years. Over those years, the Commission has granted specific exceptions to this general prohibition. Last year, staff began dealing with specific requests from licensees to adopt additional exceptions to those existing rules. Those requests presented an opportunity to take a look at the issue more generally and to make recommendations to the Commission regarding gifts and promotions. Last August, staff presented information via a report in writing, and a verbal report to the Commission, outlining various promotions currently allowed.

During the past nine months, staff has discussed gambling promotions with both commercial stimulant and charitable nonprofit licensees at Commission study sessions and this rules package is a result of those discussions. There remain some differences from the position of agency staff and the licensees. Those issues were unable to be resolved in the negotiated rulemaking process in terms of a coming to agreement on such things as dollar limits. These are set forth as the staff recommendation due for discussion and filing. As referenced in the rules package, the three activities that licensees may engage in to promote their business are: 1) Gifts, which are items licensees give away to their customers and are not directly connected to the gambling activity. 2) Gambling promotions, which are directly connected to the gambling activity and the promotion may offer cash, merchandise or free discounted coupons to encourage the player to begin or to continue to play in a gambling activity. The result or outcome of those promotions cannot be an additional opportunities to gamble. 3) Promotional contests of chance which are allowed under RCW 9.46.0356—are designed in a way for businesses to promote their goods and services to the community. There must always be a way for a person to enter a promotional contest of chance at no cost.

Item 13(A) is a new section proposed as WAC 230-12-045 - Promotions for gambling activities, conditions and restrictions. This new rule sets forth the parameters licensees must follow in offering promotions in conjunction with gambling activities. Therefore, staff will no longer need to review individual promotions on a submission-by-submission basis. The new rule addresses promotions for both commercial and charitable nonprofit licensees. Gambling promotions would be limited to only persons playing in a licensed activity and each promotional item cannot exceed \$500 in actual cost. Promotions cannot be combined with promotional contests of chance in any way, and, because this rule sets forth the parameters for all promotions, rules granting exceptions to the general prohibition are up for repeal or amendment.

Item 13 (B) is an amendatory section to WAC 230-12-050 - Extension of credit loans or gifts prohibited, limited exception. This rule prohibits licensees from giving credit, loans or gifts to persons playing in a gambling activity. The rule also sets forth several exceptions to the rule prohibiting gifts. Subsections 4 and 5 reference promotional gifts and promotions for gambling activities. The language regarding giving away free or discounted food or drink or merchandise as gifts has been moved to Subsection 1. Staff was attempting to clarify the rule as they rewrote it. Language regarding promotions has been removed as all promotions are addressed in the WAC previously discussed. Currently, licensees may give free or discounted food, drink or merchandise in conjunction with the gambling activities. These types of gifts will still be allowed. However, language has been added to limit the actual cost of each gift to no more than \$500. Furthermore, charitable and nonprofit organizations must keep a record of all gift receipts where the actual cost of the gift is over \$100.

Item 13(C) – is a repealer – WAC 230-02-145 - Promotional marketing gifts. This rules allows Bingo operations to give away gifts that promote the game of Bingo or a specific other licensee such as a Bingo dauber imprinted with the Bingo licensees' name. This rule is up for repeal as all promotional activities will be covered by 13(A), WAC 230-12-045, as proposed.

Item 13(D) is a repealer - Commercial activities, performances as gifts, advanced approval required. Currently, performances such as comedy acts, singers, etc., offered during a Bingo game are considered a promotional activity.

This rule sets forth the criteria Bingo licensees must follow in offering performances to their players. This rule is up for repeal because all promotional activities would be covered by WAC 230-12-045. These promotions would still be allowed under that section.

Item 13(E) is a repealer – WAC 230-21-025 - Discounts and promotional gifts. This rule sets forth the criteria Bingo licensees must follow when offering discount coupon incentives and gifts to their players. This rule is up for repeal because all those activities would continue to be allowed and are addressed in WAC 230-12-045.

Item 13(F) is a repealer – WAC 230-22-030 - Free games for winners, restrictions. This rule allows Class A, B, and C Bingo licensees and unlicensed Bingo operators to offer free games to their players. Class D and above licensees are not allowed to directly award free games; however, they can award gift certificates. Gifts for this cannot be restricted to the gambling activity but can be used in the Bingo overall operation which means it could be used to buy Pull-tabs, food at the snack bar, merchandise etc. This rule is up for repeal because these promotions would be covered by WAC 230-12-045. These types of promotions would continue to be allowed under the new rule.

Item 13(G) is an amendatory section to WAC 230-40-800 – Operating rules for house-banked card rooms. This rule is up for amendment to remove Subsection 6, which requires staff approval for promotions. All activities for promotions would now be covered under WAC 230-12-045, but would not require individual staff approval.

Item 13 (H) is a repealer – WAC 230-40-897 - Card games and promotions. This rule sets forth the procedures house-banked card room licensees must follow in offering promotions in conjunction with card games. Currently, card rooms are limited to \$50 and staff must approve each promotional scheme. This rule is up for repeal because all promotional activities related to gambling activities would be addressed in WAC 230-12-045. The change would increase the promotion from \$50 to \$500 and remove staff approval of each promotional scheme. Staff recommends filing these rules for further discussion. **Chair Orr** called for comments and questions.

Gary Murray, Vice President, Recreational Gaming Association, addressed two major concerns: one is the promotional contest of chance—the way additional entries can be provided to their customers, and whether or not they can use a gaming activity or the outcome of gaming activities. His main concern was the limitation on the value of a promotion. He has had several discussions with staff during study sessions. If the industry changes a rule in a game, for example, if they run a Pai Gow game where they offer a jet ski as a prize for achieving a hand, and they run that 24/7, and they put it in their rule that if a player gets that hand, they are awarded this prize because it is the value of the player's bet, then they can do that. However, if they wish to run it only during certain hours of the day to promote their slower hours, then it is a promotion, and under this rule, it would not be allowed. He said it was difficult for him to understand why something is okay if they run it 20 hours a day, but not okay if they run it six hours a day.

Mr. Murray said his next concern is the idea of strict regulation and control which is mandated as part of the directive to maintain strict regulation and control. If there are jackpots out there with \$100,000 on them that a player can enter by putting a dollar in the slot to win, and that's fine, that's within the realm of where they are. He asked why giving away a jet ski, if you achieve a goal and it cost the customer nothing, why it all of a sudden goes beyond and expands the nature and scope of gaming in Washington? Mr. Murray indicated that sometimes operators feel that they are not regarded as a legitimate business in Washington—that they are somehow inferior. They are not given the same rights as other businesses in Washington. The only way his industry can put a product on sale is to offer the customer a better value for their gaming dollar. When they are restricted on when they can or cannot run a sale, and how much they can run a sale for, it handicaps them in how they market their businesses in the marketplace in Washington. Mr. Murray noted that some people would say it entices people to gamble more. He acknowledged this is of concern to the Commission. However, just because there is an opportunity to win more money if one plays another hour, it's a judgment call. Most people make the decision that they could win that \$100,000 if they stay for two more hours, or they go home. They already go home when they feel like they've played long enough. The majority of his customers use their judgment on when they leave regardless of whether or not there's a jackpot. Mr. Murray stated that the promotion is just another creative way that he can create more fun, more excitement, and more opportunity for the customer, normally at no cost, for them to get a better value for their dollar.

Commissioner Ludwig asked if he could have a sale on Tuesdays and Thursdays like some other merchants would.

Mr. Murray responded that they couldn't exactly run a sale. However, they could do things as long as under the

proposed rule they don't exceed a \$500 in value. If he wanted to give away something fancy for a very difficult outcome, he can do that, but he can't do it only on Mondays. **Commissioner McLaughlin** asked why. Mr. Murray said that is his question too. Because it is done in a rule, and it's a permanent value for the hand, then it is a rule and everyone has an equal opportunity every day no matter when they play the game. If the licensee only does it on Mondays, then it's considered a promotion, and they must fit within the promotional rules. Even though it's the same contest with the same rules, and the same outcome, the way the rules are structured, if they don't offer it to everybody at all times, it's not allowed.

Commissioner McLaughlin asked staff to respond to her question. **Deputy Director Berg** responded that when the game rules are required to be approved by staff, staff analyzes what that game is, in fact they sit in the director's office and show him what the game is, and sometimes it gets approved. Offering a black or red sports car seven days a week is a different calculus than offering it for two hours on the part of the owner. The owner is at greater risk offering it as a prize in the game rules, and that is why it limits their risk by offering it for a defined period of time. That is how staff views it as different. If it is part of the game rule, that's the owner's risk continually while that game is being offered. Mr. Berg emphasized the limit is purely a policy call, whether it is \$50, \$500, \$5,000, or unlimited—it is policy. Businesses make decisions as to whether it is in their calculus to offer it 24/7 versus to offer it high odds for a short period of time, the chances of getting won are less than high odds all of the time.

Gary Murray affirmed, they lower their risk on their slower days to help create more business on the slower days and times. Mr. Murray said the industry could still run a happy hour with two for one for Blackjack during certain hours, or every day, or any time. The industry runs into an impasse with the dollar value that the customer can receive in any promotion. Under most circumstances, \$500 is probably within most of the promotions that most people want to offer. However, in some areas where there is larger competition and where people have better opportunities just five or ten minutes away, he must have a bigger trophy or something of that nature to attract the customer.

George Teeney, Recreational Gaming Association, explained that he has two licensed facilities in LaCenter. Mr. Teeney said that by increasing the \$500 limit to another number, a much larger number, there's no harm to the general public. One of the Commission's mandates is to protect the general public, and there is no harm there. It is the business that is taking the risk if they choose to offer a higher prize. The businessman hopefully has a business plan in order to take care of it in case somebody gets a hit and wins. The rules and regulations staff has set forth ensure that the general public, the licensees, as well as the Commission are all protected at \$500 limits. He suggested that if the Commission felt comfortable that the rules and regulations protect the \$500 limits, that they would probably be good enough to do something much higher. In reference to the protection aspect, his industry believes that the Gambling Commission has done a good job in many ways, and if that is the case, the limits should certainly be raised. Mr. Teeney understood and appreciated the Commission's philosophy and policy; however, he felt the \$500 limit was too small.

Commissioner McLaughlin asked why staff proposed the \$500 limit. **Ms. Cass-Healy** reiterated this is a policy call—and comports with the RCW dictating that gambling will be closely controlled and regulated. Staff does not have any concern from a regulatory standpoint, and staff can regulate whether there is a limit, or not. Commissioner McLaughlin asked why the figure of \$500. Ms. Cass-Healy said staff felt that that was a number that would allow the licensees to do what they are currently doing and not be overly restrictive, while at the same time still setting a limit.

Steve Strand, Washington Charitable and Civic Gaming Association, suggested a slight language addition to RCW 230-12-045 (2). It states promotionals shall not consist of schemes in which the prize or outcomes is additional opportunities to engage in gambling activities. Mr. Strand suggested that that be amended to read, "to engage in licensed gambling activities." That would mean activities licensed by and through the Commission. A specific example falls to lottery tickets. He advised that he has had them a long time and they are often used as a promotional opportunity—and the activity is not licensed through this Commission, rather the Lottery Commission. There were no other comments.

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to file these rules for further discussion. *Vote taken; the motion passed unanimously.*

Chair Orr called for a recess at 11:00 a.m. and reconvened the meeting at 11:15 a.m.

14. Petition of Bullseye Distributing LLC for a Declaratory Order:

Amy Patjens, Manager, Communications & Legal, reported that on March 5, staff received this petition for a declaratory order from Pat Risken, an attorney for Bullseye Distributing, LLC. The petitioner is the distributor of the Free Spin vending machine, which was demonstrated to the Commissioners at their meeting in October. This is the first declaratory order in probably five or six years. Such requests are like petitions for rulemaking in that they are covered by the Administrative Procedures Act. Any person may petition an agency for a declaratory order with respect to a rule, order, or a statute that is enforceable by the agency. The petitioner must set forth facts and reasons to show five things: Uncertainty necessitating a resolution exists; that there is an actual controversy arising from the uncertainty, such that the declaratory order would not just be an advisory opinion; that the uncertainty adversely impacts the petitioner, and that the adverse effect on the petitioner outweighs any adverse effects on others, or on the general public that might likely arise from the order requested. The last thing they have to do is comply with any additional requirements that the agency has established dealing with form and procedural rights.

Ms. Patjens said there is only one rule which deals with declaratory orders and most of it mirrors the Administrative Procedures Act. Bullseye Distributing, LLC would like a determination as to whether the Free Spin machine is a promotional contest of chance, as authorized by the RCW, or whether it is prohibited. As explained in the memorandum from Melinda Froud, Staff Attorney, under the Administrative Procedures Act, the Commission has 30 days from when the agency receives a petition to do one of four things: 1) To enter an order declaring the applicability of the statute, the rule, or the order; 2) set the matter for a specified proceeding to be held no more than 90 days after receiving the petition; 3) the Commission must set a specified time—no more than 90 days after receipt by which it will enter a declaratory order; or, 4) the Commission may go ahead and decline to enter a declaratory order stating the reasons for such action. Staff recommends setting the matter for proceedings within 90 days—staff suggests the May Commission meeting, in Spokane. Staff also suggests that in the interim, in order to provide a sufficient record, that the Commission ask the petitioner to submit the system to the agency's electronic gambling lab for evaluation, along with any other information as directed by staff that would be necessary for this review. Staff is anticipating that the lab would forward its findings to the Commission, to be used as part of the Commission's proceeding in May.

The petitioner's attorney was notified this would be on the agenda today and Mr. Risken is present. There is also a letter staff received yesterday that has been provided to the Commissioners. The petitioner is asking that the Commission make a decision earlier than the May meeting. The petitioner feels that the Commission has sufficient information on which to make a decision. They do acknowledge, though, that the Commission isn't required to act earlier than within the 90-day period.

Patrick Risken, of the law firm of Evans, Craven & Lackie in Spokane, and attorney for Bullseye Amusements and Bullseye Distributing, said this is the first time he has appeared before the Commission. He said he wanted to make it clear that by filing a petition, he was not pounding on the podium demanding a decision. In reviewing the minutes of previous meetings regarding this particular device, he noted there were comments made by Chairman Orr, Commissioner Forrest, and by Mr. Ackerman, that there was no petition before the Commission. He viewed that as a request to draw the entire record together with a petition so that a decision could be made. Mr. Risken understood that there are various options under this particular WAC provision that are available to the Commission. He respectfully suggested that the record has been built, the record has been completed, and that it was time for a decision. It's entirely within the Commission's discretion as to what to do with the petition, and if the decision is to set it for a hearing at another time, he affirmed he would be prepared to play ball that way as well. The decision is entirely up to the Commission, and that was the purpose of the petition.

Commissioner Ludwig verified this is a petition for declaratory order. **Mr. Risken** affirmed. Commissioner Ludwig commented that in reviewing Page 1 of Mr. Risken's letter, the petitioner just received notice of the issue being scheduled on today's agenda. Mr. Risken affirmed. Commissioner Ludwig said that, as he understood the letter Mr. Risken has said that is not sufficient notice—and it certainly may not be—and it puts the petitioner at a disadvantage. Then on the second page, the second paragraph says, "therefore, Bullseye Distributing is entitled to a decision regarding the legal status of vending machines which it intends to distribute." Commissioner Ludwig interpreted the lack of time to prepare as an issue; however, it appears that Mr. Risken still wanted the Commission to make a decision today. Mr. Risken said his concern was that he didn't know what was going to happen today. His concern was that there was going to be some kind of a full-blown hearing, and he wasn't going to be able to have all of the people that he would think would be necessary to address any Commissioner or staff questions regarding any further issues that might come up on

two days' notice. He apologized if he created any confusion. However, in light of the several hearings and presentations, he would submit that the record is now complete—the only thing he was concerned with was that this was going to be some kind of fact finding hearing and he couldn't get people together in 48 hours to do that. **Commissioner Ludwig** pointed out that setting the hearing for May does give him that opportunity. **Mr. Risken** affirmed. Commissioner Ludwig said it sounded like he didn't want to take that opportunity. Mr. Risken said it was within the Commission's discretion as to what to do with the petition, and he again stated that the record has already been constructed in this case.

Commissioner McLaughlin said there was no hearing; they simply had a machine presented. **Mr. Risken** affirmed, there were demonstrations and there were discussions, and it has been a rather unusual circumstance. A lot of time and effort by staff, by the Commission, and by Bullseye Distributing (which is a distributor, not a manufacturer of the machine), has been put into this, and now we are at a point where it is being noted in the record that there is no petition. Mr. Risken believed that hearings have been held, but he understood the distinction.

Commissioner Ludwig and **Commissioner McLaughlin** began to verify their understanding of various functions of the machine as they recalled. **Jerry Ackerman**, Assistant Attorney General, interjected, saying that what they just heard is the problem with there being no record in front of the Commissioners at this point. He said there were conversations with the gentleman that was the creator of the device, who discussed with staff and with the Commission, the nature of his machine and what was being proposed. There were conversations (they couldn't be called testimony at that point) with Mr. Woodring—Mr. Ackerman advised he didn't know if Mr. Woodring was representing Mr. Risken's clients at that point, or if he was representing the Free Spin creator. Mr. Ackerman recalled that there might have been a third attorney involved. There is a several-month history of various people interacting with staff, and at some point interacting with the Commissioners as part of a demonstration of the device that had been created. Mr. Ackerman did not recall any of the gentlemen present today making those presentations. If they did, he apologized for not remembering. He suggested that one of the problems the Commission is facing today is that no one really knows what portions of those conversations, of the documents, or, of the representations that were made, are what that the petitioner wishes to adopt, or, they wish to disavow, or, that they wish to clarify. Mr. Ackerman guessed the petitioners might not even know for sure whether or not the machine that the petitioners are asking for a declaratory order on is the same machine that was demonstrated prior to the Commission meetings. At some point during or immediately after the presentations, the creator of the machine was suggesting that he might alter the machine. In fact at one point the Commission had questions that were in the nature of, "Is this the same machine that was found to be illegal in Idaho?" Mr. Ackerman said he believed the gentleman responded that it had been changed since then—and then there were conversations suggesting that it would be changed more.

Mr. Ackerman believed a problem now, as has been demonstrated, the Commissioners are having to rely upon their memories, and Mr. Ackerman said he was certainly doing the same thing. The Commissioners and he don't know that Mr. Risken and his clients are adopting or even making the same proposal and arguments in favor of what they are doing that Mr. Woodring and the machine's manufacturer was making several months ago. Mr. Ackerman suggested that people needed to bear in mind that this is headed toward something that will be equivalent to an adjudicatory proceeding. In the end, the Commission will sit in a quasi-judicial capacity and give an order one way or another that will then be appropriate for legal review should the petitioner choose to pursue it. Mr. Ackerman informed the audience that would be a record review of what they do here, so there must be a record. He said he didn't want to cut off his employer's options to ask questions, should they choose to do so, but he didn't believe progress would be made today by trying to clarify what did or didn't take place at meetings several months ago. In the end, he believed they needed a record to look at and to make a decision on, and unless some sort of an agreement is reached with staff, and he does not represent staff on this issue, they will have their own counsel if they choose to do so, and they too will need to present their position on what is being presented. Mr. Ackerman suggested that the Commissioners were not in a position to say yea or nay to anything today because they have no record in front of them. **Mr. Risken** appreciated the comments and concurred that was the dilemma that he was faced with upon notice a couple of days ago. He didn't know this was going to happen and if that's the procedure they must follow to get everybody on the same page, that was fine.

Chair Orr said that what he is hearing is that Mr. Risken wants to be on the Commission agenda as quickly as possible. **Commissioner McLaughlin** inquired who were the other two gentlemen representatives. **Jody Curley**, from Outback Entertainment/Bullseye Distributing and **Dave Winfrey**, Bullseye Amusements and Bullseye Distributing in Spokane, introduced themselves and said they represent the World of Games/Free Spin machine previously demonstrated.

Chair Orr called for an Executive Session at 11:30 a.m. and reconvened the public meeting at 11:35 a.m. **Chair Orr** said that it is apparent to the Commission that this should be on the agenda so that there is a record. Therefore, he set the hearing for the May meeting in Spokane—and the Commission would like the petitioners to submit their record to the Commission about the middle of April.

Jerry Ackerman said that what has been expressed to him by the Commissioners is that they would like to set this for a hearing at the May meeting, which is within the 90 days. They would ask that Mr. Risken develop his record by April 15th. In other words, supply to staff what you want in the record upon which you're going to rely, and also to clearly identify the machine and the attributes of the machine. Whether the petitioner offers that to staff in the form of schematics – he would leave that up to them; it's their record to develop. He wanted them to understand that if they do not adequately develop it, then undoubtedly they would expect that staff would ask for additional information or explanation. He believed that it was in Mr. Risken's and his clients' best interests to clearly identify their machine, describe it as best they can, and also to make whatever arguments they have to support it, both in terms of the practical aspects of it, how it works, and the legal arguments, because staff will have their own counsel at that point. The Commission staff will try to determine whether or not they agree with the petitioner's assessment of where this fits in the statutory scheme. He reminded them that his role, as always, would be to assist the Commission in making a quasi-judicial decision at the May meeting, and he would not be involved with staff and their assessment of the petitioner's submittal. **Mr. Risken** said that was fine, he asked for a copy of the minutes of this meeting with Mr. Ackerman's comments, so that he track the requests, and they will do it.

Mr. Ackerman encouraged the petitioners and Commission staff to exchange information as cooperatively as possible because that would help in developing the record and would help assure, to the extent possible, that this gets decided at the May meeting. His one concern was that if there hasn't been a full exchange of information, and the parties haven't tried to agree where they can and disagree where they have to, that one side or the other will be here saying I need another 30 or 60 days. That is still undetermined. **Mr. Risken** said they would be happy to do that, asked who he should be in touch with, and thanked everyone for their time. **Chair Orr** advised Mr. Risken that Director Day would be the appropriate point of contact.

15. Other Business/General Discussion/Comments from the Public.

Chair Orr called for any other discussion or public comment. **Don Kaufman**, General Managing Director, Big Brothers/Big Sisters of Spokane, commented on WAC 230-12-045 – Promotions Rule. He said that every time a rule is made, it is a little bit like the theories of nature. There is kind of an equal and opposite reaction to what happens. Every time a rule is made that limits the nonprofits, they have created an open opportunity for the tribes to do something. In this case, we have now created an opportunity for the tribes to give Pull-tabs away with Bingo prizes. We have created an opportunity for them to give away the session's Bingo card to that winner that session. The nonprofits can't do any of that. We have also created an opportunity, because they have machines, that they cannot only give \$100 prize to their Bingo player, but they can give them a \$10 smart card to go next door to play their machines in the tribal setting. He wanted to point this out so the Commission could talk about this rule for the next couple of meetings. **Commissioner McLaughlin** responded that the Commission doesn't regulate tribal Bingo or their Bingo machines. Mr. Kaufman responded that was exactly why the nonprofits shouldn't be over-regulated. **Commissioner Ludwig** asked Mr. Kaufman how he felt about the legislative session from the perspective of the nonprofit organizations. Mr. Kaufman said that from the nonprofits' perspective, he thought they made headway in two areas. They got 2918 through, which will allow them to operate more efficiently in the future, should that not be vetoed. They also got the House's ear on a potential relationship with the Washington State Lottery for the future. He thought it was too bad the Senate didn't see the value of that, because, instead of cutting \$300 or \$400 million in services, they probably could have restored some of those funds. Commissioner Ludwig asked someone to explain to him, when they have the opportunity, how the nonprofit position changed from about three years ago to what it is today, regarding facilities and days. Mr. Kaufman said they would bring that issue back as a presentation.

16. Adjournment:

With no further business, **Chair Orr** adjourned the meeting at 11:45 a.m.

Minutes submitted by:

Shirley Corbett , Executive Assistant

WSGC Meeting, Pasco

Draft Minutes

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